

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
adoption of New Rules I	)	ON PROPOSED ADOPTION
through VII, and the proposed	)	AND REPEAL
repeal of ARM 8.15.302, all	)	
pertaining to boilers, terminology,	)	
licensure, examinations,	)	
responsibility of licensees, and	)	
training	)	

TO: All Concerned Persons

1. On November 12, 2004, at 10:00 a.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Mr. Todd Boucher no later than 5:00 p.m., November 8 2004, to advise us of the nature of the accommodation you need. Please contact Todd Boucher, Boiler Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2368; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdboi@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I USE OF TERMINOLOGY For the purposes of this chapter, the following terminology is used:

(1) "Boiler classification" means, for the purpose of determining the appropriate class of boiler operating engineer's license required:

(a) a determination of the conditions under which the boiler is actually being operated, with respect to:

(i) the operating pressure;

(ii) the operating temperature; and

(iii) the BTUs per hour or horsepower per hour produced;

but

(b) is not based upon the maximum allowable working pressure (MAWP) rating limit(s) established on the boiler's manufacturer's data plate.

(i) The department may require the boiler owner to provide appropriate verification from the power supplier, which establishes the BTU per hour or horsepower per hour rate at which the boiler is being fired, as applicable.

(2) "Department" means the department of labor and industry.

(3) "Hot water supply boiler" means a boiler providing potable water within the temperature and pressure limits established by the state plumbing code, and which may be monitored by any person holding a current low pressure boiler operating engineer's license or limited low pressure operating engineer license.

(4) "Limited low pressure operator" means a person who has been issued a boiler operating engineer's license specifically authorizing the monitoring of low pressure hot water heating boilers and hot water supply boilers only.

(5) "Monitoring" the operation of a boiler means appropriate periodic maintenance and observation of the functioning of a hot water heating boiler or hot water supply boiler, which contains all failsafe features necessary to operate fully unattended. Failsafe features include control circuitry that stops the flow of fuel and/or control feed water to the boiler.

(6) "Operating" a boiler or steam engine means the manual operating and monitoring of an automatically fired power boiler or steam engine, which requires the operator to be present while the boiler is fired. For purposes of this chapter, "operating" does not include monitoring an automatically fired steam heating boiler, provided that no operations are performed upon the boiler other than maintenance and emergency shut down in alarm situations.

(7) Additional definitions related to boiler operators are in building code rules found at ARM 24.301.711. The department incorporates by reference the definitions contained in the September 30, 2004, version of ARM 24.301.711, which include the following terms:

- (a) boiler;
- (b) high temperature water boiler;
- (c) hot water heating boiler;
- (d) power boiler;
- (e) standard boiler;
- (f) state special boiler;
- (g) steam heating boiler;
- (h) temporary boiler;
- (i) traction engine;
- (j) water heater; and
- (k) water heating system.

AUTH: 50-74-101, MCA  
IMP: 50-74-101, MCA

REASON: It is reasonable and necessary for the Department to propose these definitions to clarify the types of boilers operated, the difference between monitoring and operation of a boiler, and a sub-class of licensees - limited low pressure boiler operating engineer's license. There is also a reference to definitions used by the boiler inspection program for boiler operations, to provide additional clarification for terms used relating to boilers and pressure vessels.

NEW RULE II LICENSE REQUIRED TO OPERATE BOILERS AND STEAM ENGINES (1) A person shall obtain the proper class of boiler operating engineer's license from the department if the person is:

- (a) operating a boiler;
- (b) operating a steam engine; or
- (c) monitoring the operation of an automatically fired boiler.

(2) If the boiler or steam engine being operated or monitored is exempt from the provisions of Title 50, chapter 74, MCA, the person is not required to obtain a boiler operating engineer's license.

AUTH: 50-74-101, MCA

IMP: 50-74-103, 50-74-301, MCA

REASON: It is reasonable and necessary for the Department to propose this rule to require that boiler operators operating or monitoring a boiler be properly licensed unless otherwise exempted. The term monitoring was added for automatically fired steam heating boiler, hot water heating boiler, or hot water supply boiler, which specifically contains all the failsafe features necessary to operate fully unattended. Additionally, it is considered essential that licensing occur to ensure that public health, safety and welfare is protected.

NEW RULE III APPLICATION FOR LICENSURE (1) Any person required to obtain a boiler operating engineer's license shall make application to the department on form(s) prescribed by the department.

(2) Applications for licensure must include:

- (a) a completed and signed application;
- (b) proof that the applicant is 18 years of age or older;
- (c) a nonrefundable application fee; and
- (d) documentation acceptable to the department establishing that the applicant has the requisite experience and qualifications to take the examination.

(3) Applicants for other than a first or second class boiler operating engineer's license may provide documentation in lieu of the requisite experience and qualification requirements. An applicant for other than a first or second class boiler operating engineer's license may furnish documentation which provides:

- (a) proof the applicant has successfully completed department approved training course(s) specific to the class of boiler license sought; and

- (b) verification, acceptable to the department, from a boiler operating engineer with a license at least equal to the class of license sought by the applicant, that the applicant has worked with the type of boiler for which the license is sought under the engineer's supervision for a minimum of 40

hours and that the applicant is competent to operate the boiler of the class for which the license is being sought.

(4) Applicants may apply for a limited low pressure boiler operating engineer's license which limits them to low pressure hot water heating boilers and hot water supply boilers only. To qualify for a low pressure boiler operating engineer's license for operation of both steam and hot water boilers, applicants must pass both the steam and hot water portions of the low pressure operator examination.

(5) The department will review applications for licensure on a case-by-case basis and approve only those applicants meeting the requirements established by 50-74-304 or 50-74-307, MCA, as applicable. The department may accept credentials and documentation it believes to be substantially equal to the training and experience requirements established above.

AUTH: 50-74-101, MCA

IMP: 50-74-302, 50-74-303, 50-74-304, 50-74-305, 50-74-307, 50-74-308, MCA

REASON: It is reasonable and necessary for the department to clarify minimum application requirements and to set forth review process considerations the department uses in determining that those minimum requirements are met to better protect the public from potential harm.

NEW RULE IV EXAMINATIONS (1) Examinations to determine the fitness and competence of applicants will be conducted in Helena, Montana at not less than three month intervals. At the department's discretion, additional examinations may be conducted based on the number of approved applicants waiting for examination.

(2) The department may conduct examinations in other locations and accept examination results from third party agencies if authorized by the department.

(3) Special examinations may be held in the event the examination date and place regularly set by the department conflicts with the religious beliefs of the applicant or for other appropriate reasons, and in that event, the applicant may petition the department by letter requesting such special examination. If the department allows such a special examination, it shall set the time and place, in its discretion.

(4) Applicants will be required to successfully complete the examination with a minimum passing score of 70%.

(5) Failing candidates will be required to pay a retake fee and will have to wait a minimum of 45 days from their last failure to retake the examination.

(6) An applicant who fails to appear and take the first examination for which the applicant is scheduled may have the examination fee apply toward the next scheduled examination. However, if the applicant fails to appear and take the next scheduled examination, the fee is forfeited and any

application for a subsequent examination requires an additional examination retake fee.

AUTH: 50-74-101, MCA

IMP: 50-74-302, 50-74-306, 50-74-311, 50-74-320, MCA

REASON: It is reasonable and necessary for the Department to provide this new rule to clarify the examination process that will be utilized. This new rule also includes exam location information, passing percentage required, review of failed examinations requirements, and failure to show for examinations. Applicants were not aware of the examination requirements or what is considered a minimum passing score.

NEW RULE V RENEWAL OF LICENSE (1) Renewal of licenses is on an annual basis. Licensees shall submit the appropriate fee established in ARM 8.15.301 when applying to renew a license.

(2) Renewal notices will be mailed by the department prior to the expiration of the boiler operating engineer's license to the licensee's address on file. It is the responsibility of the licensee to keep a current address on file with the department. Lack of receipt of such renewal notice by the licensee does not relieve the licensee of the responsibility to renew the license.

(3) The consequences for failure to renew a boiler operating engineer's license are established in 50-74-313, MCA.

(4) At the time of license renewal, operators shall inform the department, in writing or by online renewal on the forms provided, which boiler(s), identified by Montana boiler number (MTB#) and location, the operator is responsible for operating and/or monitoring.

(5) At the time of license renewal, operators shall inform the department, in writing or by online renewal on the forms provided, of the name(s) of any person(s) currently being trained to operate and/or monitor the boiler(s) listed in (4).

AUTH: 50-74-101, MCA

IMP: 50-74-313, MCA

REASON: The Department has determined that it is reasonable and necessary to propose this new rule to address the renewal processes. Additional renewal information would allow for tracking of trainees related to boiler license numbers, which can then be used to verify experience received by applicants.

NEW RULE VI RESPONSIBILITY OF LICENSEE (1) Licensed boiler operating engineers shall allow a department inspector free access to the boiler and, when requested, shall assist the inspector with the inspection.

(2) A power boiler in active service (which is the period of time when the main stop valves are open and the boiler is firing) must not be left unattended for a period longer than it takes for the water level to drop below the normal operating level when:

(a) the feed water is shut off; and

(b) the boiler is forced to its maximum capacity.

(3) The operator shall personally check the operation of a power boiler, the necessary auxiliaries, and the water level in the boiler at such intervals as are necessary to ensure safe operation of the boiler. In no case may this interval exceed 120 minutes.

(4) All applicable boiler operating certificates and boiler operating engineer's licenses must be conspicuously displayed in the boiler room. In lieu of posting in the boiler room, appropriate signage may be provided establishing the location where the documents may be examined.

(5) Licensees shall notify the department of any change in the status of their responsibility to operate and/or monitor the boiler(s). Notification must be in writing and received by the department within 10 days of the change of status.

(6) When an accident occurs which renders a boiler inoperative, the licensee shall notify the department as soon as it is practical.

AUTH: 50-74-101, MCA

IMP: 50-74-106, 50-74-210, 50-74-214, MCA

REASON: It is reasonable and necessary for the Department of Labor and Industry to provide these changes to clarify responsibility of licensees related to inspections, operation and oversight of power boilers, posting of licenses, and notification of change in address. This rule addresses common questions about the operation of the boilers.

NEW RULE VII APPROVAL OF TRAINING COURSES (1) Any person or entity wishing to conduct a training course, approved by the department as acceptable for fulfilling educational requirements for boiler operator engineer licensure established in 50-74-304, MCA, shall apply for approval on forms provided by the department.

(2) Minimum training course hours are as follows:

(a) For limited low pressure boiler operating engineers, applicable to the monitoring of low pressure hot water heating and hot water supply boilers only, a minimum of 16 hours, with a minimum of eight hours of classroom training is required.

(b) For all other classes of boiler operating engineer training courses, a minimum of 30 hours, including classroom instruction and field or shop time is required.

(3) Training course providers shall receive department approval prior to offering courses. Applications for approval of a training course must include the following:

(a) a description of the training course identifying the specific class of license for which the course is designed;

(b) a list of books, publications and source material to be utilized in the training course;

(c) a course outline, which includes a breakdown of the hours to be used to cover each area of training, including total classroom instruction hours and field or shop time hours;

(d) a copy of the certificate of completion to be awarded to the persons successfully completing the course;

(e) the name of each person who will act as an instructor for the course; and

(f) a copy of the instructor's boiler operating engineer's license or other documentation acceptable to the department, which outlines the instructor qualifications to teach the course.

(i) Instructors who are not currently licensed by the state of Montana as a boiler operating engineer with a class of license at least equal to the level of training class being offered are required to successfully pass the applicable written examination prior to teaching the training course.

(4) The department will review and evaluate each training course application on a case-by-case basis, and will approve only those courses fulfilling the requirements established in this chapter. Once approved by the department, course curriculum cannot be modified until proposed changes are approved by the department.

(a) Approval for a training course remains valid until such time as the department gives the training course provider 30 days notice of the department's justification and intent to withdraw its approval of the course.

(b) Training course providers may petition the department for reconsideration during the 30 day period. The department will notify the provider of its final determination subsequent to the termination of the 30 day period.

(c) The department staff may, at no charge, observe courses for the purpose of auditing the course content, but will not be issued a course completion certificate.

(5) Instructors or entities approved to conduct a training course shall provide a certificate of completion to those persons successfully completing the course, which includes the specific name of the approved course and the date of completion.

(6) All training programs currently approved will have to be reevaluated by [90 days after the adoption of this rule]. Those programs not evaluated by [90 days after the adoption of this rule] will not be accepted by the department as credit for experience for license applicants.

AUTH: 50-74-101, MCA

IMP: 50-74-304, MCA

REASON: It is reasonable and necessary for the Department of Labor and Industry to incorporate changes made

to boiler operator law (50-74-304, MCA) during the 2003 Legislative session, House Bill 525, enrolled as Chapter 392, Laws of 2003. These changes primarily establish the ability of applicants to obtain approved training and with additional experience qualify for licensure as a low pressure, limited low pressure, or third class boiler operator. New Rule VII will replace the existing training program's rule ARM 8.15.302.

4. The rule proposed to be repealed is as follows:

8.15.302 TRAINING PROGRAMS CREDITED TOWARD EXPERIENCE  
found at ARM page 8-487.

AUTH: 50-74-101, MCA  
IMP: 50-74-305, MCA

REASON: It is reasonable and necessary for the Department of Labor and Industry to repeal ARM 8.15.302 in conjunction with implementing the provisions of Chapter 392, Laws of 2003. The repeal is proposed in conjunction with the proposed adoption of NEW RULE VII, regarding approval of training courses.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to: Todd Boucher, Boiler Program, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdboi@state.mt.us](mailto:dlibsdboi@state.mt.us) and must be received no later than 5:00 p.m., November 19, 2004.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Program's site on the World Wide Web at <http://discoveringmontana.com/dli/boi>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Boiler Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Program. Persons who wish to have their name added to the list shall make a written request that includes



the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Boiler Program administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Boiler Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdboi@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor requirements of 2-4-302, MCA, apply and have been fulfilled.

9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

DEPARMENT OF LABOR AND INDUSTRY  
BOILERS, BLASTERS AND CRANES

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State October 8, 2004.